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12 SALES, INC., BANANA REPUBLIC, LLC, AND OLD NAVY,
13 LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 ROOTS READY MADE GARMENTS CO.
18 W.L.L.,

Case No. C 07-03363 CRB

19 Plaintiff,
20 v.
21 THE GAP, INC., a/k/a, GAP, INC., GAP
22 INTERNATIONAL SALES, INC., BANANA
23 REPUBLIC, LLC, AND OLD NAVY, LLC
24 Defendants.

25 **DECLARATION OF ROSE DARLING IN
26 SUPPORT OF GAP'S OPPOSITION TO
27 ROOTS' EX PARTE APPLICATION TO
28 EXTEND TIME TO SERVE EXPERT
DISCLOSURE**

Date: N/A
Time: N/A
Dept: Courtroom 8, 19th Floor
Judge: Hon. Charles R. Breyer

1 1. I am an attorney licensed to practice law in the State of California and before this
 2 Court and am an associate at Keker & Van Nest, LLP, counsel for defendants The Gap, Inc.,
 3 a/k/a, Gap, Inc., Gap International Sales, Inc., Banana Republic, LLC, and Old Navy, LLC
 4 (collectively “Gap”).

5 2. On June 26, 2008, Roots’ counsel Brad Nash and I agreed that expert disclosures
 6 would be due on August 4, 2008, and rebuttal disclosures on August 18, 2008. As of June 26,
 7 both Gap and Roots had already disclosed to one another the identity of the expert that each had
 8 engaged.

9 3. On July 25, 2008, Mr. Nash contacted me to ask for a further extension of time to
 10 serve its expert disclosures, until August 18. In response, I told Mr. Nash that delaying expert
 11 disclosures that much would not work because (a) Gap’s expert was out of the country on a
 12 planned vacation the week of August 25 and thus would be unavailable to prepare a rebuttal
 13 report that week and (b) Rule 26(a)(3) pretrial disclosures were due on September 5 and opening
 14 motions *in limine* on September 10, and thus pushing expert discovery into September would
 15 hamper Gap’s ability to prepare those submissions. Mr. Nash, however was insistent that Roots
 16 needed additional time to prepare its expert disclosures, and thus on August 1, 2008, I agreed to
 17 extend the time for Roots to serve its report to August 13, 2008, with Gap’s rebuttal due August
 18 27. This was a significant compromise, given that Gap’s expert is on vacation the week of
 19 August 25, and thus Gap would have effectively less than 2 weeks to prepare a rebuttal report.

20 4. Instead of serving its expert report on August 13, however, Roots on that day
 21 disclosed to Gap under the parties’ protective order **another** expert that Roots apparently intends
 22 to use, and sought ex parte relief from the Court for an extension of time to serve its expert
 23 disclosures. Attached hereto as **Exhibit A** is a true and correct copy of an email dated August
 24 13, 2008 from Mr. Nash to me disclosing Roots’ new expert.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this Declaration was executed on August 14, 2008 at San
3 Francisco, California.

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5 */s/ Rose Darling*
ROSE DARLING

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